



**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

**PLAN FOR APPOINTMENT OF COUNSEL
PURSUANT TO THE CRIMINAL JUSTICE ACT**

Effective June 27, 2005

Amended October 2019

I. AUTHORITY

The Judges of the United States District Court for the Western District of Tennessee, as required by The Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and the *Guide to Judiciary Policy*, Volume 7, Part A, with the approval of the Judicial Council of the Sixth Circuit, have adopted this Plan, applicable to both the Western and Eastern Divisions, for furnishing representation in federal court for persons who are financially unable to obtain adequate representation in accordance with the CJA.

II. POLICY

Any person who is financially unable to obtain representation and who is eligible for appointed representation shall be provided counsel and related services pursuant to 18 U.S.C. § 3006A. Counsel furnishing representation shall be selected from the Office of the Federal Public Defender or from the Criminal Justice Act Panel (CJA Panel). Representation under this Plan shall include counsel and investigative, expert, and other services necessary for adequate representation.

This Plan will be posted on the Court's web site and a copy will be provided to each private attorney upon the attorney's first case appointment under the CJA or that attorney's appointment to the CJA Panel.

III. ELIGIBILITY FOR APPOINTED REPRESENTATION

A. Subject Matter Eligibility

1. Representation **must** be provided for all financially eligible persons unable to obtain adequate representation who are:
 - a. charged with a felony or Class A Misdemeanor;
 - b. a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
 - c. charged with a violation of probation or face modification of a term or condition of probation unless the modification sought is favorable to the probationer and the government has not objected to the proposed change;
 - d. under arrest, when representation is required by law;
 - e. entitled to appointed counsel in parole proceedings;
 - f. charged with a violation of supervised release or face modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. subject to a mental condition hearing under 18 U.S.C. Chapter 313;
 - h. in custody as a material witness;
 - i. seeking to set aside or vacate a death sentence under 28 U.S.C. §§ 2254 or 2255;
 - j. entitled to appointment of counsel in international transfer proceedings under 18 U.S.C. § 4109;
 - k. entitled to appointment of counsel under the Sixth Amendment to the Constitution; or

1. facing loss of liberty in a case and federal law requires the appointment of counsel.
 2. Representation **may** be provided for a financially eligible person who:
 - a. is charged with a Class B or C Misdemeanor or an infraction for which a sentence to confinement is authorized;
 - b. is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence;
 - c. is charged with a civil or criminal contempt and faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, or the Congress, or a federal agency or commission that has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 - e. has been advised that they are the target of a grand jury investigation;
 - f. is proposed for processing under a pretrial diversion program; or
 - g. is held for international extradition under 18 U.S.C. Chapter 209.
 3. Representation **may** also be provided for financially eligible persons in ancillary matters appropriate to the criminal proceedings under 18 U.S.C. 3006A(c). In determining whether representation in an ancillary matter is appropriate to the criminal proceedings, the court should consider whether such representation is reasonably necessary to:
 - a. protect a constitutional right;
 - b. contribute in some significant way to the defense of the principal criminal charge;
 - c. aid in preparation for the trial or disposition of the principal criminal charge;
 - d. enforce the terms of a plea agreement in the principal criminal charge;
 - e. preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f); or
 - f. effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).
- B. Financial Eligibility
1. Eligibility for representation under the CJA is a judicial function to be performed by a district or magistrate judge after making appropriate inquiries concerning a person's financial eligibility. In determining whether a person is financially unable to obtain counsel, the judicial officer may consider statements made under oath by the person in the presence of the judicial officer or relevant information contained in a signed financial eligibility affidavit (Form CJA 23).
 2. The Court, in its discretion, will determine whether a person entitled to representation will be represented by the Federal Public Defender or by a CJA Panel attorney.
 3. Appointment of counsel may be retroactive to include representation prior to appointment.
 4. If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f). If

partial payment is required, those payments will be made to the Clerk of Court who will periodically report to the Court the status of payments.

5. If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed in accordance with the general provisions set forth in this Plan.
6. Law enforcement agencies and the United States Attorney's Office are prohibited from assisting in the completion of the financial affidavit or seeking to obtain information concerning the financial eligibility of the person requesting appointment of counsel.

IV. TIMELY APPOINTMENT OF COUNSEL

- A. The Court. Counsel must be provided to eligible persons as soon as is feasible after they are taken into custody, when they appear before a district or magistrate judge, when they are formally charged or notified of charges if formal charges are sealed, or when a district or magistrate judge otherwise considers appointment of counsel appropriate under the CJA and related statutes, whichever occurs earliest. The Court, in cooperation with the Federal Public Defender and the United States Attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.
- B. Federal Law Enforcement. To facilitate the timely appointment of counsel, federal law enforcement is obligated to promptly notify the Court when an individual who has been arrested is requesting counsel be appointed.
- C. United States Attorney's Office. The United States Attorney's Office must promptly notify the Court when an indictment is returned or unsealed, when a criminal information is filed, or when a target letter has been issued.
- D. Pretrial Services Office. Counsel must be appointed prior to, and be present for, the pretrial services interview of a financially eligible person as soon as is feasible *unless* the right to counsel has been waived or the accused otherwise consents.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION

- A. Establishment. The Federal Public Defender's Office (FPDO) is responsible for rendering defense services on appointment.
- B. Standards. Services rendered by the Federal Public Defender's Office must be consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.
- C. Professional Conduct. The Federal Public Defender's Office must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct, Code of Conduct for Federal Public Defender Employees, Tennessee Rules of Professional Conduct and the rules of practice adopted by this Court.
- D. Administration. The Federal Public Defender shall be responsible for organizing, supervising, and managing, the FPDO.
- E. Case Assignment. All persons that are referred by a district or magistrate judge to the FPDO for purposes of representation are assigned to the Federal Public Defender who is responsible for the subsequent assignment to assistant defenders in the FPDO.
- F. Case Apportionment. The Federal Public Defender will be appointed in approximately 75% of the cases requiring appointed representation. This percentage is subject to adjustment on an as-needed basis, such as the need for counsel in mutli-defendant cases or where there is a shortage of available attorneys from the Federal Public Defender's Office.

- G. Responsibility to Provide Training. The FPDO in coordination with the CJA Panel Liaison is responsible for developing and conducting training for CJA Panel attorneys and defenders on various aspects of criminal defense advocacy, including, but not limited to, criminal procedure, rules of evidence, and e-discovery. This includes providing training and mentoring programs for applicants for membership on the CJA Panel, as well as continuing education and in-service programs for current members of the CJA Panel and professional staff in the FPDO.

VI. CJA PANEL OF PRIVATE ATTORNEYS

A. Establishment of the CJA Panel

1. Establishment and Size of the CJA Panel. A CJA Panel of private attorneys who are eligible and willing to be appointed to provide representation under the CJA will be established for each division. The CJA Panel for the Western Division shall contain no more than 50 attorneys. The CJA Panel for the Eastern Division shall contain no more than 20 attorneys. The Court may adjust the size of the CJA panel in either division as the District's caseload necessitates and to ensure CJA panel attorneys receive enough cases to maintain their proficiency.
2. Administration. The Clerk of Court, or designee, is responsible for administration of the CJA Panel. The Clerk, or designee, shall maintain: (1) a current list of all attorneys on the CJA Panel, with current office address(es), telephone number(s), and email address(es) and (2) records of CJA Panel assignments and records reflecting the proration of appointments between attorneys from the FPDO and CJA Panel attorneys.
3. Case Apportionment. CJA Panel attorneys will be appointed in approximately 25% of cases requiring appointed representation. This percentage is subject to adjustment as necessary.
4. Attorney Eligibility. All attorneys in good standing of the federal bar of this District and the Sixth Circuit Court of Appeals are eligible for appointment to this District's CJA Panel. Attorneys must maintain a primary, satellite, or shared office in this District or an adjacent county. Attorneys must possess strong litigation skills and have significant experience representing persons charged with serious criminal offenses. At a minimum attorneys must have at least three years federal criminal jury trial or state criminal court jury trial experience. Attorneys who do not possess criminal experience but believe they may have equivalent or other experience are encouraged to apply and detail that experience in their application. Attorneys interested in serving on the CJA Panel must complete and submit to the Clerk of Court the *Application Form for Appointment to the Criminal Justice Act Panel of Attorneys* available on the Court's web site. In no event may any attorney working in a prosecutorial capacity be eligible to serve on the CJA panel.
5. Appointment to CJA Panel. The District Court Judges must approve attorneys for appointment to the CJA Panel after receiving recommendations from the CJA Panel Selection Committee, established pursuant to Section VII of this Plan.
6. Appointment Terms. Appointments to the CJA Panel are for three-year terms. The CJA Panel Selection Committee meets annually to recommend new appointments and reappointments to the CJA Panel for the following year. Reappointments shall be three years in duration and a CJA Panel attorney may be reappointed as often as the Court elects to do so.
7. Reappointments. The Clerk of Court, or designee, as Administrative Coordinator for the CJA Panel Selection Committee, will notify CJA Panel members prior to the expiration of their appointment term. To be considered for reappointment for

another three-year term, a new application form must be submitted. CJA Panel attorneys will receive notification from Clerk of Court, or designee, at least three months prior to the expiration of the CJA Panel attorney's term.

B. Removal or Suspension from CJA Panel

The Chief Judge shall refer to the CJA Panel Selection Committee:

1. Automatic Removal. Any CJA Panel member who is suspended or disbarred from the practice of law will be removed from the CJA Panel immediately. A CJA Panel attorney who does not accept at least one appointed criminal case per year is subject to automatic removal unless good cause can be shown.
2. Disciplinary Review. The CJA Panel Selection Committee will conduct a disciplinary review of any CJA Panel member who has had an action taken against him or her by a court, licensing authority, grievance committee, or administrative body (e.g., finding of contempt, sanction, or written reprimand). Notice to the CJA Panel member is required.
3. Complaints. A written charge of neglect of duty or malfeasance will be directed to the CJA Panel Selection Committee who will determine whether further investigation is necessary. Notice to the CJA Panel member is required. The CJA Panel Selection Committee will conduct a hearing if requested by the attorney involved and submit a written summary of the charges, the hearing, and recommendations to the Chief Judge. The Chief Judge shall submit the CJA Panel Selection Committee's materials to all the District Judges, who shall collectively decide the appropriate resolution.
4. Confidentiality. All information acquired concerning the possible suspension and/or removal of an attorney from the CJA Panel will be kept confidential, unless otherwise directed by the Court.
5. No Property Interest. None of these procedures creates a property interest in being on or remaining on the CJA Panel.
6. Duty of Attorney to Notify Court. A CJA Panel attorney shall notify the Chief Judge within 30 days if any action has been taken against the attorney by a licensing authority, grievance committee, administrative body, or state or federal court.

C. Resignation from the CJA Panel

An attorney who wishes to resign from the CJA Panel shall give notice to the Clerk of Court. Upon receiving such notice, the Clerk of Court shall notify the Chief Judge and Chair of the CJA Panel Selection Committee, who will remove the CJA Panel attorney prior to expiration of the attorney's term.

D. CJA Panel Attorney Representative

The Chief Judge, or designee, will select one member of the CJA Panel to serve as a liaison between the CJA Panel and the Court. The CJA Panel Attorney Representative will serve without compensation. The CJA Panel Representative will serve as a member of the CJA Panel Selection Committee.

VII. CJA PANEL SELECTION COMMITTEE

- A. Establishment. The Chief Judge of the District shall appoint a CJA Panel Selection Committee (Committee) to assist in the selection, retention, discipline, and removal of CJA panel attorneys.
- B. Membership. The Committee shall consist of at least one judicial officer (a district judge, magistrate judge, or both), at least two members of the private bar who engage in active federal court criminal practice, the Federal Public Defender, and the CJA Panel Attorney Representative. The judicial officer shall serve as the Committee Chair and the Federal Public Defender shall serve as its permanent secretary. The Committee may be expanded from time to time at the discretion of the Chief Judge to maintain or establish

diversity of the Committee. The Clerk of Court, or designee, shall assist the Committee as the Administrative Coordinator. In no event may an attorney for the government be a member of the Committee.

- C. Terms. Committee members from the private bar shall serve terms of three years and membership shall be staggered to ensure continuity on the Committee. The Committee members will serve without compensation and will meet at least once per year as well as any time the Court asks the Committee to consider an issue.
- D. Duties of the Committee.
 - 1. The Committee shall:
 - a. set standards for membership on the CJA Panel;
 - b. review new applications for appointment to the CJA Panel;
 - c. review applications for reappointment to the CJA Panel;
 - d. review recommendations from any interested citizens concerning the fitness of an applicant;
 - e. recruit attorneys for membership on the CJA Panel to ensure diverse and qualified attorneys from the community are encouraged to participate in representation under the CJA;
 - f. review the size and composition of each CJA Panel to maintain diversity and to ensure attorneys are receiving enough cases to maintain their proficiency;
 - g. assist the Federal Public Defender's Office in training and mentoring programs.
 - 2. Upon completion of reviews, the Committee will submit recommendations to the District Judges as to applicants deemed qualified and applicants deemed unqualified. Appointments to the CJA Panel will be made by the District Judges from recommendations submitted by the Committee.
 - 3. In considering applications for reappointment to the CJA Panel, the Committee should consider:
 - a. how many cases the CJA Panel member has accepted and declined during the review period;
 - b. the CJA Panel member's participation in continuing education or other training opportunities;
 - c. complaints against the CJA Panel member; and
 - d. whether the CJA Panel member continues to meet the eligibility criteria.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. Services rendered under this Plan must be consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.
- B. Professional Conduct. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct, Code of Conduct for Federal Public Defender Employees, Tennessee Rules of Professional Conduct and the rules of practice adopted by this Court.
- C. Training. Members of the CJA Panel must remain current with developments in federal criminal defense law, practice and procedure, including the *Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases*. CJA Panel attorneys are required to attend a minimum of two criminal law related training sessions sponsored by the Court, Federal Public Defender, CJA Panel Selection Committee, or any other equivalent programs. It is expected that panel members will take CLE courses and other training to keep current

on federal criminal defense law and practices. Failure to attend such additional training may will constitute a basis for removal from the CJA Panel.

- D. Mentoring. Newly appointed CJA Panel attorneys may be required, as a condition of their appointment to the CJA Panel, to have a mentor during their first year on the CJA Panel and for their first trial. To satisfy this requirement, the attorney may arrange for mentoring from a current CJA Panel attorney, may work under an experienced federal criminal defense attorney in his or her law firm, or may participate in the Federal Public Defender’s Office’s mentoring program.
- E. Facilities and Technology Requirements. CJA Panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases and to comply with the requirements for filing electronic payment vouchers in CJA eVoucher.

VIII. CJA CASE APPOINTMENTS AND COMPENSATION

A. Appointment Procedures

No person may select a lawyer from the CJA Panel. The selection of CJA counsel shall be random through the use of an automated selection system. Direct appointments may be made at the discretion of the presiding judge. CJA Panel attorneys can reasonably expect to be appointed to approximately three to ten cases per year.

- 1. Automated Selection System. Appointment of cases to CJA Panel members will ordinarily be made through the use of an electronic CJA Attorney Selection System. The electronic selection system is a weighted system of calling where program logic continuously self-balances the number of calls across all panel attorneys with the attorney with the lowest weighted call load appearing first in the queue to be called. Points are assigned based on results of actual contacts as follows:

- **CRIMINAL CASES**

3	Accept, Decline, or Judicial Appointment
1	Unable to Reach Attorney
0	Case Conflict – Unable to Accept

- **POST JUDGEMENT MATTERS
(Including *Johnson* and First Step Act Evaluations)**

1	Accept, Decline, or Judicial Appointment
1	Unable to Reach Attorney
0	Case Conflict – Unable to Accept

The selection system uses a random selection if one or more attorneys are tied at the same weight.

- 2. Direct Appointments. In the interest of justice, judicial economy, continuity of representation, or any other compelling reason, the Court may also make direct appointments from the CJA Panel or appoint a member of the bar who is not member of the CJA Panel. The Clerk of Court enters all such direct appointments into the CJA Attorney Selection System to ensure appointments stay in balance.
- 3. Number of Appointed Counsel. More than one attorney may be appointed in non-capital cases the Court determines to be complex.

4. Capital Cases. Given the complex nature of capital cases, the presiding district judge will manage all aspects of the appointment and compensation of counsel in these cases in accordance with 18 U.S.C. §§ 3005, 3006A and 3599, and Volume 7A, Ch. 6 of the *Guide to Judiciary Policy*. This includes appointment of appellate counsel in direct appeals of federal death penalty cases, post-conviction counsel in proceedings filed under 28 U.S.C. § 2255, and counsel in federal capital habeas corpus proceedings filed under 28 U.S.C. § 2254. Generally, a person charged with a federal capital offense is entitled to the appointment of two attorneys, one of whom must be learned in the law applicable to capital cases. In addition to being well qualified, attorneys appointed to capital cases must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.
5. Notification to Counsel. In all cases in which a person qualifies for appointment of counsel under the CJA, personnel in the appointing court will immediately notify the appointed lawyer of the fact of the appointment and provide relevant case information in order for the CJA Panel attorney to access relevant court documents from PACER. Counsel appointed to represent a person shall make contact with that person as soon as possible after counsel is advised of the appointment. Counsel shall not accept the appointment if he or she is unable to expeditiously meet with a client in custody.

B. Duration and Substitution of Counsel

A person for whom counsel is appointed shall be represented at every stage of the proceedings from the initial appearance before the judicial officer through appeal, including ancillary matters appropriate to the proceedings. The judicial officer may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

C. Appellate Representation.

When a defendant wishes to appeal, the attorney appointed by the Court under this Plan is responsible for representing the defendant until relieved by the Court of Appeals. If the attorney wishes to be relieved on appeal, the attorney shall comply with the rules of the Court of Appeals regarding notice to the defendant and a motion to withdraw as attorney.

D. Compensation

Any attorney appointed pursuant to the provisions of this Plan shall be provided fair compensation for time spent in and out of court and shall be reimbursed for reasonable expenses incurred pursuant to 18 U.S.C. § 3006A(d)(1), (2), (3), and (4).

1. Payment Vouchers. Claims for compensation must be submitted **on standard** voucher forms approved by the Judicial Conference of the United States through the District's electronic vouchering system (CJA eVoucher). Claims must be submitted within 45 days after final case disposition. Claims submitted after 45 days must have an accompanying memorandum setting forth justification for the delay.
2. Voucher Review. All vouchers are reviewed by Clerk's Office financial staff for technical accuracy and compliance with CJA Guidelines before submission to the presiding judge for approval.
3. Voucher Errors. Vouchers containing errors (ex., contains claim for service or expense that is not allowed, voucher submitted without required supporting documentation, etc.) are returned to the attorney for correction.
4. Voucher Reductions. Except in cases involving mathematical corrections, no claim for compensation will be reduced without providing counsel notice and an

opportunity to be heard. When contemplating a reduction, the presiding judge may refer the voucher to the Committee for review and recommendation before taking final action.

5. Timeliness of Voucher Approval. Absent extraordinary circumstances, all persons involved in voucher review will make their best effort to avoid delays and process vouchers within 30 days of submission.
- E. Investigative, Expert, and Other Service
Requests for authorization of funds for investigative, expert, or other services must be submitted *ex parte* using this District's eVoucher system. Counsel must comply with the provisions set forth in the *Guide to Judiciary Policy*, Vol. 7A, Ch. 3 in obtaining and paying for investigative, expert and other services.
- F. Case Budgets
In complex non-capital cases, federal death penalty cases, and capital habeas cases, the court requires submission of a case budget. Case budgets are to be submitted *ex parte* and filed and maintained under seal.

IX. RULES AND REPORTS

This Plan shall be subject to such rules and regulations of the Judicial Conference of the United States and the Judicial Council of the Sixth Circuit governing the operation of plans under 18 U.S.C. § 3006A, as amended, as may be issued from time to time. The Clerk of Court shall be responsible for reporting on the appointment of counsel to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify.

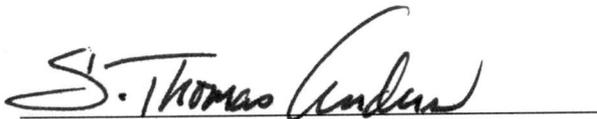
The District Judges shall receive monthly statistical reports from the Clerk of Court regarding all CJA operations, including appointments attempted, appointments completed, and reasons for unaccepted appointments.

X. EFFECTIVE DATE

This Plan, as amended, shall become effective immediately upon approval by the Judicial Council of the Sixth Circuit.

APPROVED this 10th day of January, 2020, *nunc pro tunc* to October 24, 2019.

For the Court:



S. Thomas Anderson
Chief United States District Judge

CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, *et seq*, the foregoing revised Plan for Appointment of Counsel Pursuant to the Criminal Justice Act for the United States District Court for the Western District of Tennessee, has been duly received and approved via mail ballot dated December 11, 2019 as complying with the law by the Judicial Council of the Sixth Circuit of the United States. The said revised plan shall become effective upon the date of this approval.

This 8th day of January, 2020.



R. Guy Cole, Jr., Chief Judge